



S.A.No.440 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.440 of 2023

&

C.M.P.No. 13291 & 20159 of 2023

D.Saikumaran

...Appellant

Vs

1.T.Sulochana

2.K.S.Dasaratha Nadar

3.The Regional Manager
The Bharat Petroleum Corporation Limited,
Anna Nagar,
Chennai – 600 040

4.The Territory Manager (Installation),
Tondiarpet Division,
The Bharat Petroleum Corporation Limited,
Chennai – 600 018.

... Respondents



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Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree in A.S.No.10 of 2018 dated 30.11.2022 on the file of the learned Principal District Judge, Chengalpattu reversing the order dated 22.12.2017 passed in I.A.No.94 of 2017 in O.S.No.6 of 2008 on the file of the learned Sub Judge, Tambaram.

For Appellant : Mr. R.Arvind Srevatsa

For Respondent 1 : Mr. K.Jayasudha

For Respondent 2 : No Appearance

For Respondents : Mr. V.Anantha Natarajan
3 & 4.

JUDGEMENT

The 1st defendant in the suit O.S.No.6 of 2008 on the file of the Sub Judge, Tambaram, who had taken out an application for rejecting the plaint in I.A.No.94 of 2017 is now before this Court by way of Second Appeal. The brief facts are as follows and the parties are



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referred to in the same rank as before the Trial Court.

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2. The plaintiff has filed the suit in question seeking a declaration that she is the absolute owner of the suit schedule property and for a permanent injunction restraining the defendants from in any manner installing any Petrol Retail out-let station in the suit property. The plaintiff had pleaded that she had purchased 17 cents of land in S.No.376/1A from one Ranganatha Naicker by way of a registered sale deed dated 21.07.1982. The plaintiff would submit that she was the absolute owner in possession and enjoyment of the same since the date of the purchase. Thereafter, she had sold away 11 ½ cents from out of the 17 cents to one Manimegam under a registered sale dated 25.01.1991 and retained 5 ½ cents on the eastern side adjoining Agaram – then road. It is this 5 ½ cents which is the subject matter of the suit.



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3. The plaintiff would contend that the defendants 1 and 2 who are strangers to the property and owners of the land south of the suit property had made repeated attempts to trespass into the suit property after the plaintiff had refused to sell the suit property to them.

4. The plaintiff would submit that the defendants had made attempts on 08.07.2005 and 22.07.2006 to enter into the suit property by dismantling the fencing and this was successfully prevented by the plaintiff. That apart, the defendants had also lodged a false police complaint before the Selaiyur Police station, stating that the 1st defendant had title over the suit property under a sale deed dated 24.05.1982 executed by the said Ranganatha Naicker in favour of one Elumalai. The plaintiff would submit that the said sale deed dated 24.05.1982 executed in favour of Elumalai did not relate to the suit property since the plaintiff has thereafter purchased 17 cents abutting the Agaram road from the very same Ranganatha Naicker.



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5. The plaintiff would submit that she has come to learn that the defendants 1 and 2 had obtained licence from defendants 3 and 4 to install Petrol retail Outlet Bank by manipulating the records as if the 1st defendant is the owner of the suit property. The plaintiff would categorically state that she did not sell or encumbered the suit property to the defendants 1 and 2 or to their vendors at any point of time and it was only an extent of 11 ½ cents out of 17 cents which she had sold to Manimegam.

6. The plaintiff would submit that the 1st defendant was attempting to grab the suit property on the basis of the sale deed dated 24.05.1982 executed by Ranganatha Naicker in favour of the said Elumalai pertaining to an extent of 5 ½ cents of land, which is a different portion. The total extent in the said suit survey number was an extent of 250 cents.



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7. The plaintiff would submit that the 2nd defendant being the owner of the adjacent land on the southern boundary along with the 1st defendant is trying to annexe the suit property belonging to the plaintiff. Therefore, in order to avoid multiplicity of proceedings the plaintiff by impleading defendants 3 and 4 has approached this Court for the relief stated above.

8. The 1st defendant had filed a written statement on 15.11.2012. Since the 1st defendant has taken out an application for rejecting the plaint, this Court is not traversing through the averments contained in the written statement as the contents of the written statement may not be germane for considering the application filed under order VII Rule 11.



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9. The 1st defendant has taken up an application to reject the plaint and the basis on which the 1st defendant would seek to have the suit rejected is herein below set out:

(i) *The plaintiff has filed two other suits, namely, O.S.No.132 of 2006 against one Vijayakandeepan and K.S.Dasaratha Nadar (the 2nd defendant herein) for an injunction restraining them from interfering with her peaceful possession and enjoyment of the suit property and O.S.No.169 of 2006 filed against the very same defendants and defendants 3 and 4 for an injunction restraining them from installing any petrol retail outlet station. Pending these two suits, the present suit for declaration and injunction has been filed and the cause of action for the present suit is the same as claimed in the earlier suits. The present suit filed without seeking leave*



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under Order II Rule 2 is an abuse of process of law. The suits O.S.No.132 of 2006 and 169 of 2006 were later dismissed as withdrawn.

(ii) The suit property has been sold earlier in point of time to one Elumalai i.e., on 24.05.1982, whereas the plaintiff has purchased the extent of 17 cents only on 21.07.1982. Therefore, Ranganatha Naicker on the date of the sale in favour of the plaintiff did not have any right to execute the sale in favour of the plaintiff and the same is illegal and void.

(iii) Non joinder of Ranganatha Naicker as a party to the proceedings is fatal. The suit ought to have been filed within 3 years from the date of the sale in favour of Elumalai, i.e., on or before 1985.



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10. The learned Subordinate Judge, Tambaram, by order dated 22.12.2017 was pleased to allow the petition for rejecting the plaint. The same was challenged by the plaintiff before the Principal District Judge, Kancheepuram in A.S.No.10 of 2018. The learned Principal District Judge, Kancheepuram by her order dated 30.11.2022 was pleased to allow the appeal and set aside the order of the Trial Court. Challenging the same, the 1st defendant is the appellant before this Court.

11. This Court by order dated 28.06.2023 was pleased to admit the Second Appeal on the following substantial questions of law:

(i) Whether the First Appellate Court has committed an error in assuming that there is a dispute on identity of the property?



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(ii) Whether the First Appellate Court was right in not considering the various aspects dealt with by the trial Court while rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908?

12. Mr. B.Arvind Srevatsa, appearing on behalf of the appellant / 1st defendant would submit that the Lower Appellate Court had traversed beyond the scope of application under Order VII Rule 11. The learned Judge failed to appreciate the fact that when no cause of action has been disclosed or when the suit is barred by limitation, the Court should not permit the plaintiff to unnecessarily protract the proceedings.

13. The learned counsel would also submit that having filed two earlier suits on the very same cause of action, the plaintiff has filed the present suit without seeking leave under the provisions of Order II Rule



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2 CPC and therefore, the suit ought to be rejected on this ground. The learned counsel would submit that the Lower Appellate Court has failed to appreciate the fact that the suit property had been conveyed to Elumalai earlier in point of time by the vendor, Ranganatha Naicker and therefore, the plaintiff who has no title to the property has filed the above suit.

14. The learned counsel appearing on behalf of the 1st respondent / plaintiff would submit that in an application for rejecting the plaint the Court is only guided by the contents of the plaint. A perusal of the plaint filed in O.S.No.6 of 2008 on the file of the Sub Court, Tambaram would clearly set out the cause of action for filing the suit. The ground on which the present suit has been filed are the grounds which have to be considered and proved during trial.

15. Heard the learned counsels and perused the records.



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16. The two primary defense on which the 1st defendant has come forward to reject the plaint are:

(a) That the suit property has already been sold to Elumalai, the predecessor in title to the 1st defendant. The plaintiff's case is that the suit property and the property that has been sold to the said Elumalai are two different properties. This is an issue which has to be substantiated by both the parties by filing documentary evidence. The learned counsel for the 1st defendant would fairly concede that S.No.376/1A1B consists of larger extent of the land. The description of the four boundary in both the sale deeds are also different. This is an issue which has to be proved through evidence.

(b) That the suit is barred by provisions of Order II Rule 2. This argument cannot be countenanced for the



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simple reason that the plaintiff has withdrawn both those suits which were filed for a bare injunction and the suit in question is a comprehensive suit filed for declaration and consequential injunction. The question of limitation would not arise since it is the contention of the plaintiff that the 1st defendant was attempting to now trespass into the property and the 1st defendant is not a party to the earlier proceedings.

17. Further, the suit has been filed in the year 2008 and the application for rejecting the plaint has been filed only in the year 2017 when the matter was posted for Trial. The First Appellate Court has rightly taken note of the dispute with reference to the identity of the property and substantial question of law (i) is answered in favour of the plaintiff.



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18. A perusal of the Judgement of the First Appellate Court would clearly set out the detailed analysis of the Judgement of the Trial Court and the reasons as to why the First Appellate Court had disagreed with the findings of the Trial Court. Therefore, the substantial question of law (ii) is also answered against the 1st defendant.

19. The Trial Court shall dispose of the suit within a period of 6 months from the date of receipt of a copy of this order. It is informed that the 3rd and 4th defendants have not filed their written statement though the suit is of the year 2008. The 3rd and 4th defendants shall positively file their written statement when the suit is next listed before the Trial Court.



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20. With the above direction, the Second Appeal stands dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

30.10.2023

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Index : Yes/No

Speaking order/non-speaking order

To,

1.The Principal District Judge,
Chengalpattu.

2.The learned Sub Judge,
Tambaram.

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P.T.ASHA, J.,

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